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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

LYNDON B. JOHNSON, in his individual capacity, and V. F. STRIEGLER, County Judge of Blanco County, Texas, and FRANK SHELLEY, Sheriff of said County, and C. H. STEVENSON, County Clerk of said County, in their official capacity as members of and constituting the Election Board of said County and as representatives of the Election Boards of the other Counties of Texas as a class, *Petitioners*,

v.

COKE R. STEVENSON, *Respondent*.

No. 466

SUPPLEMENTAL MOTION FOR STAY.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

COKE R. STEVENSON, *Respondent.*

No. .....

SUPPLEMENTAL MOTION FOR STAY.

To the Honorable the Chief Juctice of the United States and the Associate Justices of the Supreme Court of the United States:

Lyndon B. Johnson, in his personal capacity, and V. F. Striegler, County Judge of Blanco County, Frank Shelley, Sheriff of Blanco County, and C. H. Stevenson, County Clerk of Blanco County, Texas, in their official capacity as members of and constituting the Election Board of Blanco County, Texas, and as representatives of the Elec-

tion Boards of the other counties of Texas, as a class, file this supplemental motion for a stay of the Temporary Injunction and of all proceedings in the United States District Court for the Northern District of Texas, Fort Worth Division, in and with respect to the action entitled Coke R. Stevenson, Plaintiff, versus Tom L. Tyson, et al., defendants, Civil No. 1640.

On September 29, 1948, Mr. Justice Black, as an Associate Justice of this Court, on motion of petitioners herein, granted a stay of the Temporary Injunction issued by the aforesaid United States District Court in the aforesaid cause. This stay provided that the Temporary Injunction "is and shall be of no force and effect, until further order of the Supreme Court."

In filing this Supplemental Motion for a Stay, petitioners wish to make it clear that they have no doubt as to the authority of Mr. Justice Black, as a single Justice of this Court, to issue the stay described above, or as to the validity of that stay. This Supplemental Motion is not filed to supersede or nullify the original Motion presented to him. But since that stay was subject to the order of this Court, petitioners deem it advisable to file with this Court their motion which will provide this Court with a basis upon which it may act independently of Mr. Justice Black's order, if it so chooses. In addition, petitioners renew their prayer that all proceedings in the District Court, and not merely the Temporary Injunction, be suspended until determination of the issues on appeal.

This motion is filed pursuant to the provisions of Sections 2101 (e), 1651, 1254 and 1292 of Title 28 of the United States Code; and Rule 38, Paragraph 6, of the Supreme Court of the United States.

In support of this Motion, petitioners allege and show the following:

1. The history of these proceedings and the reasons why it is imperative that the Temporary Injunction and the proceedings in the District Court be stayed, are set forth

in the Motion for Stay which petitioners filed in this Court and addressed and presented to Mr. Justice Black, and upon which he issued his Order staying the Temporary Injunction. That petition is attached hereto, marked Annex "A" for convenience of reference, and made a part hereof as if specifically alleged.

2. As Annex "A" relates in detail, the District Court on September 23, 1948, entered a Temporary Injunction (Exhibit D to Annex "A") which had the effect of preventing the Secretary of State of Texas and the county election boards of that State from taking the steps necessary under the laws of Texas to place the name of Lyndon B. Johnson on the ballot for purposes of the general election to be held on November 2, 1948, as the nominee of the Democratic Party of Texas for United States Senator. Johnson had been duly elected as the candidate of the Democratic Party at the second primary election held under the laws of Texas, and all steps had been duly taken under the laws of Texas except the formal ministerial acts of certification of his name by the Secretary of State, the posting of his name by the various local election boards, the printing of the ballots including his name, and the distribution of those ballots. The District Court was without jurisdiction or justification to enter this Temporary Injunction.

3. Upon the entry of the Temporary Injunction, petitioners herein filed their notice of appeal. On September 24, 1948, they docketed their appeal in the Court of Appeals for the Fifth Circuit. At the same time, they presented to the Honorable Joseph C. Hutcheson, Jr., Chief Judge of that Court, a motion for a stay pending the determination of the appeal. Judge Hutcheson held that he, as a single Judge of the Court, had no authority to grant a stay of a Temporary Injunction. (Exhibit E to Annex "A"). The Court of Appeals was not in session and would not convene until October 4. The appeal was set for hearing before the Court on Monday, October 4, 1948.

4. Unless the Temporary Injunction were immediately stayed, petitioner Johnson's name could not be posted for inclusion on the ballot as the candidate of the Democratic Party for United States Senator, since the laws of Texas require that a candidate's name be posted for ten days before it may be printed on the ballots, and that the ballots be available for distribution to absentee voters twenty days before the general election. The effect of these provisions of Texas law is that Johnson's name would have to be posted not later than October 2, for purposes of the general election on November 2. In addition, time is required, before even posting can begin, for the Secretary of State to certify Johnson's name to the 254 county election boards throughout the State. The Secretary of State, by affidavit filed as Exhibit F to Annex "A", affirms that he is required to begin certifying names of candidates on or about September 27 in order that those names might be placed on the ballot in accordance with the laws of Texas.

5. Petitioners invoked the jurisdiction of Mr. Justice Black because the Court of Appeals for the Fifth Circuit was not in session; because Chief Judge Hutcheson determined that he as a single judge of that Court had no jurisdiction to consider petitioners' application for a stay, and because unless relief were secured well before October 4, when the Court of Appeals convenes, this cause would become moot with respect to including the name of Johnson on the ballot, the position of Johnson would be forfeited and destroyed, and appellate jurisdiction would be defeated.

6. Petitioners have not yet filed their petition for a writ of certiorari. They propose to do so as soon as that petition can be prepared and the record below certified and filed with this Court, unless on Monday, October 4, the Court of Appeals for the Fifth Circuit shall determine that it may hear and decide petitioners' appeal and unless it proceeds to decide the appeal in their favor. In the event that the Court of Appeals shall not hear the appeal or shall decide the issues therein adversely to appellants, petitioners will forth-

with file with this Court their petition for writ of certiorari.

7. It is essential that the stay of the Temporary Injunction be continued in effect. Petitioners are informed that following the suspension of the Temporary Injunction by order of Justice Black, the Secretary of State of Texas began certifying to the county election boards the name of petitioner Lyndon B. Johnson as the candidate of the Democratic Party for the office of United States Senator. However, these county boards must post Johnson's name for ten days and must print and distribute ballots including Johnson's name, if his name is to appear on the ballot for purposes of a general election on November 2. If the Temporary Injunction is not stayed and if it becomes operative, the provisions of that injunction will restrain and prevent the county election boards from posting Johnson's name and from printing or distributing ballots including his name.

8. It is also necessary that the effect of the stay issued by Mr. Justice Black be enlarged to include the suspension of any further proceedings in this action by the District Court until appellate determination of the issues presented by the appeal. By the order of the United States District Judge issued in this action on or about September 24, after the Temporary Injunction was issued, Special Masters were appointed to hold hearings and take evidence "as may be necessary for a full investigation of the facts as to the conduct and results of said primary election" in Jim Wells, Duval and Zapata Counties in the State of Texas. A copy of the aforesaid order of the District Judge is attached hereto as Annex "B". Although we are informed that upon notification of the stay issued by Mr. Justice Black, the District Judge advised the Special Masters to suspend their investigation, he has ordered them to report to him their findings prior to such suspension. The District Judge has indicated that he proposes to proceed to take evidence and determine the issues for purposes of a final injunction.

9. Unless further proceedings in the District Court are stayed and, if the District Court proceeds to take evidence and consider the issuance of a final injunction, the uncertainty and confusion caused thereby may induce various of the 254 county election boards in Texas to refrain from posting or printing on the ballots the name of Lyndon B. Johnson.

10. Unless further proceedings in the District Court are stayed, the District Judge may enter a final injunction notwithstanding his lack of jurisdiction and the pendency of the issue of jurisdiction in the appellate courts. The result of such action would be to prevent the name of petitioner Johnson from being placed on the ballot for the general election since it would be impossible to secure relief from such unlawful and unauthorized order in time to be effective.

11. The continuation and enlargement of the stay herein are necessary to protect the appellate jurisdiction of this Court since otherwise the question whether the United States District Court may prevent the name of petitioner Johnson from being placed on the ballot will be moot and to prevent irreparable injury to petitioner Johnson which will result if his name is not included on the ballot. The construction and enlargement of the stay are also necessary in the public interest and as a matter of national importance because of the interest of the people of Texas and the nation in the orderly election of a United States Senator from the State of Texas, and also because of the vital interest of the nation in the orderly conduct of elections in the various states, free from interference by the injunctive processes of the federal courts.

WHEREFORE, petitioners pray in the alternative (1) that an order be issued staying the Temporary Injunction issued by the Honorable T. Whitfield Davidson, as Judge of the United States District Court for the Northern District of Texas, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al., Civil No. 1640, and staying all further proceedings in that Court in said action until further order

of the Supreme Court of the United States; or (2) that an order be issued by this Court staying the aforesaid Temporary Injunction; or (3) that this Court allow and permit the order issued by Mr. Justice Black on September 29, 1948, to continue in full force and effect until final determination of appellate proceedings with respect to the aforesaid Temporary Injunction order.

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ANNEX "A"

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

LYNDON B. JOHNSON, in his individual capacity, and V. F. STRIEGLER, County Judge of Blanco County, Texas, and FRANK SHELLEY, Sheriff of said County, and C. H. STEVENSON, County Clerk of said County, in their official capacity as members of and constituting the Election Board of said County and as representatives of the Election Boards of the other Counties of Texas as a class, *Petitioners*,

v.

COKE R. STEVENSON, *Respondent*.

No. .....

MOTION FOR STAY.

To the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States:

Lyndon B. Johnson, in his personal capacity, and V. F. Striegler, County Judge of Blanco County, Frank Shelley, Sheriff of Blanco County, and C. H. Stevenson, County Clerk of Blanco County, Texas, in their official capacity as members of and constituting the Election Board of Blanco County, Texas, and as representatives of the Election Boards of the other counties of Texas, as a class, now file

this motion for a stay of a temporary injunction issued by the United States District Court for the Northern District of Texas, Fort Worth Division, and for a stay of other proceedings in the said District Court.

In support of their Motion, Petitioners respectfully show:

1. This motion is filed in aid of the appellate jurisdiction of the Supreme Court and pursuant to the provisions of Sections 1254, 1292, 1651 and 2101 of Title 28 of the United States Code and Rule 38(6) of the Supreme Court.

History of the Proceeding.

2. Your Petitioner Lyndon B. Johnson, being a citizen of the State of Texas and in every way qualified and in no way disqualified to hold the office of United States Senator of and from the State of Texas, was a candidate for nomination by the Democratic Party of Texas as its nominee for said office at the Second Primary Election of the Democratic Party of Texas duly conducted and held in accordance with the statutes of Texas on August 28, 1948.

3. As provided by the Statutes of Texas, the State Executive Committee for the Democratic Party of Texas duly convened and met in Forth Worth, Texas, on Monday, September 13, 1948, for the purpose of canvassing the returns of said election as certified to the Chairman of said Committee by the Chairmen of the Democratic Executive Committees of the 254 counties of Texas in which such election was held, the purpose of the canvass being to tabulate the returns so made and to determine the results of said Primary Election. The said State Executive Committee did canvass and tabulate the returns as canvassed by the several county executive committees and certified by the Chairmen thereof to the Chairman of the State Executive Committee, and as a result of said canvass and tabulation by said State Executive Committee of the Democratic Party, it determined that Petitioner Lyndon B. Johnson received

a majority of the votes cast in said Democratic Primary Election for all candidates for the office of Democratic nominee for United States Senator.

4. The said State Executive Committee of the Democratic Party duly certified the results of its canvass and tabulation to the Chairman of the State Convention of the Democratic Party convened and held in the city of Fort Worth, Texas, on September 14, 1948, all in acordance with and as provided by Statute.

5. Thereafter, on said 14th day of September, 1948, the said State Convention of the Democratic Party approved the returns so tabulated and certified to it by the said State Executive Committee, and the said Convention and the several delegates, members and officers thereof, duly and regularly confirmed the nomination of Petitioner Lyndon B. Johnson and declared him to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator of and from the State of Texas at the General Election to be held in the State of Texas on the first Tuesday in November, 1948.

6. Upon the adjournment of said State Convention, and on September 14, 1948, Honorable Tom L. Tyson, the Chairman of said Convention, and Honorable Vann M. Kennedy, the Secretary thereof, duly certified to the Secretary of State of the State of Texas, Honorable Paul H. Brown, that said Lyndon B. Johnson had been declared the nominee of the Democratic Party of Texas as its candidate for United States Senator in the General Election to be held on the first Tuesday in November, 1948, and issued a certificate to the Secretary of State so certifying, all as provided by the Statutes of the State of Texas.

7. It is established law of the Sate of Texas, as declared by the Supreme Court of Texas (*Sterling* v. *Ferguson*, 122 Texas 122, 53 S. W. (2) 133), that the certificate of nomination issued by the said State Convention of the Demo-

cratic Party is final, conclusive, and not subject to judicial review except by an election contest held under and pursuant to the Statutes of the State of Texas (No such election contest of the nomination of the said Lyndon B. Johnson has been instituted.) and gives to Lyndon B. Johnson a standing and a right which entitles him to have his name printed upon the official ballot to be voted at the General Election on the first Tuesday of November, 1948.

8. It is likewise the law of the State of Texas that it is now the statutory duty of said Paul H. Brown, in his capacity as Secretary of State of the State of Texas, to certify to each of the County Clerks of the 254 counties of the State of Texas the name of this Petitioner as the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator of and from the State of Texas in the General Election to be held in said State of Texas on the first Tuesday of November, 1948; and it is likewise the duty of the County Judges, County Clerks and County Sheriffs, constituting the election boards in the 254 counties of Texas, to take all necessary steps to have the name of said Lyndon B. Johnson printed on the official ballot to be used at said General Election as the Democratic candidate for the office of United States Senator of and from the State of Texas. The Statutes of Texas further provide that the names of all nominees and candidates for the various offices to be voted upon at the General Election be duly certified and furnished by the Secretary of State to the election boards of the 254 counties in time so that election notices carrying the names of the candidates may be posted for at least ten (10) days before the said election officials order the printing of the ballots for use in the General Election. The Statutes of Texas also provide that the official ballots which are to be used by all voters in the General Election be printed and available for distribution to absentee voters twenty (20) days prior to the date of the General Election.

9. On the 15th day of September 1948, following the final certification of Petitioner Lyndon B. Johnson's name as aforesaid, Coke R. Stevenson, the respondent herein, the opponent of Petitioner Lyndon B. Johnson in said Democratic Primary Election held on August 28, 1948, filed in the District Court of the United States for the Northern District of Texas a Complaint naming as Defendants the said Tom L. Tyson and Vann M. Kennedy, Chairman and Secretary, respectively, of the said State Democratic Convention, and Petitioner Lyndon B. Johnson, as Defendants. In the Complaint, Coke R. Stevenson asked that the Court issue a peremptory order restraining the Defendants, Tyson and Kennedy, as Chairman and Secretary of the State Democratic Convention, from issuing a certificate of nomination of Lyndon B. Johnson, and for other relief.

10. The said Complaint was presented to the Honorable T. Whitfield Davidson as United States District Judge of the District Court of the United States for the Northern District of Texas, at a point outside the said district, at 6:25 A.M. on September 15th and the said Honorable T. Whitfield Davidson, as Judge of the United States District Court for the Northern District of Texas, forthwith endorsed thereon an order restraining said Tyson and Kennedy as prayed for pending a hearing on September 21, 1948, at 10:00 A. M. at Fort Worth, Texas, at which date the temporary restraining order was made returnable. The Complaint and Order were filed in the office of the Clerk of the District Court of the United States for the Northern District of Texas, Fort Worth Division, at 1:00 o'clock P. M. on the 15th day of September, 1948. A true copy of said Complaint and Order of the said Honorable T. Whitfield Davidson, Judge of the United States District Court for the Northern District of Texas, made thereon marked Exhibit A is attached hereto and made a part hereof. Prior to the presentation of said Complaint to the said Honorable T. Whitfield Davidson, Judge of the

United States District Court for the Northern District of Texas, and prior to the entry of his Order thereon, and prior to the filing of said Complaint, the defendants Tyson and Kennedy in their capacities as Chairman and Secretary, respectively, of the State Democratic Convention, had certified to the Secretary of State of the State of Texas the nomination of Petitioner Lyndon B. Johnson as aforesaid.

11. Thereafter, on September 16, 1948, at 8:35 P. M., said Stevenson filed in the United States District Court for the Northern District of Texas an amended Original Complaint naming as additional Defendants Paul W. Brown, as Secretary of State of the State of Texas, Clarence O. Kraft, County Judge of Tarrant County, Texas, Melvin Faulk, County Clerk of Tarrant County, Texas, and Sully Montgomery, Sheriff of Tarrant County, Texas, constituting the Election Board for Tarrant County, Texas, and as representatives of a class consisting of the election boards of the 254 counties of Texas. In the Amended Complaint said Stevenson sought an amended restraining order restraining the Secretary of State from certifying the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from Texas to the several County Clerks, and restraining the several County Election Boards from preparing and distributing any official ballots for use in the General Election to be held on November 2, 1948, which contained the name of Lyndon B. Johnson as such candidate. Whereupon, the said Honorable T. Whitfield Davidson, as Judge of the United States District Court for the Northern District of Texas, entered thereon an "Enlarged Restraining Order", restraining all of the Defendants as prayed for in said Amended Original Complaint which restraining order was made returnable on September 21, 1948, at 10:00 o'clock A. M. in Fort Worth, Texas. A true copy of such Amended Original Complaint and the "Enlarged Restraining Order" entered thereon by the said Honorable T. Whit-

field Davidson, marked Exhibit B, is attached hereto and made a part hereof.

It is not alleged in the Original or the Amended Complaint that any defendant in the action acted willfully, purposefully, intentionally, or knowingly, to deprive Plaintiff of any right he may have under the Constitution or laws of the United States; nor is it alleged in either pleading that the Defendants in such action entered into a conspiracy among themselves or with any other persons to deny the Plaintiff any right guaranteed to him under the Constitution or laws of the United States.

12. The Petitioner Lyndon B. Johnson filed in the United States District Court for the Northern District of Texas a plea to dismiss the cause of action for want of jurisdiction on the grounds hereinafter set out, and on other grounds, all as shown by said plea, a true copy of which, marked Exhibit C, is attached hereto and made a part hereof.

13. On September 22, 1948, the Honorable T. Whitfield Davidson, as Judge of the United States District Court for the Northern District of Texas, after hearing argument, denied Petitioners' motion to dismiss and announced, after hearing evidence, that he would grant the injunction prayed for by the said Coke R. Stevenson. On September 23, 1948, the said Honorable T. Whitfield Davidson signed the Temporary Injunction which, among other things, enjoined the Honorable Paul H. Brown as Secretary of State of the State of Texas from certifying the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from Texas to the election officials of the several counties of Texas and further restrained the election officials of the several counties of Texas from preparing and distributing official ballots for use in the General Election to be held November 2, 1948, carrying the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United

States Senator from the State of Texas. A true copy of the said Temporary Injunction marked Exhibit D is attached hereto and made a part hereof.

14. On September 22, 1948, Petitioners applied to the said T. Whitfield Davidson for a stay of the said Temporary Injunction pending an appeal to the Circuit Court of Appeals for the Fifth Circuit and this application was forthwith denied.

15. The said T. Whitefield Davidson, after issuing the Temporary Injunction as aforesaid, announced that he would appoint commissioners to take testimony concerning the election frauds alleged in Plaintiff's Complaint at the locality in which the alleged frauds took place. Thereafter the said T. Whitfield Davidson did appoint two Commissioners to take testimony concerning the said alleged election frauds and your Petitioners are informed and believe that the two commissioners so appointed are now preparing to take such evidence.

16. On September 24, 1948, Petitioners herein docketed in the United States Circuit Court of Appeals for the Fifth Circuit, an appeal from the Order of the said T. Whitfield Davidson granting the temporary injunction and applied to the Honorable Joseph C. Hutcheson, Jr., Circuit Judge of the said United States Circuit Court of Appeals for the Fifth Circuit, for an Order staying the said Temporary Injunction, pending the determination of the appeal. On September 24, 1948, Honorable Joseph C. Hutcheson, Jr., denied the motion for a stay without prejudice to the right of Petitioners to present the motion to the full court on the ground that a single circuit judge had no authority to grant a stay in an appeal from an interlocutory injunction. A true and correct copy of the opinion of the said Joseph C. Hutcheson, Jr., marked Exhibit E is attached hereto and made a part hereof. The said motion has now been set down for hearing before three Judges of the Court of Ap-

peals on October 4, 1948. Petitioners requested an earlier hearing but the Court of Appeals failed to grant the request.

17. On September 25th, 1948, the Petitioners herein filed in the United States Circuit Court of Appeals for the Fifth Circuit a petition for a writ of mandamus and prohibition. In the said petition the Petitioners asked the Court of Appeals to prohibit the Honorable T. Whitfield Davidson from assuming, or attempting to assume, jurisdiction in this case and to order him to dissolve the Restraining Orders and Temporary Injunction hereinbefore described and to dismiss the action now pending before him. The application for the writ of mandamus and prohibition has not been heard by the Circuit Court of Appeals for the Fifth Circuit and the earliest date on which that Court will decide whether to entertain the application will be October 4, 1948.

Lack of Jurisdiction in the District Court.

18. For the following reasons, among others, the Petitioners submit that the United States District Court for the Northern District of Texas has no authority or jurisdiction to hear or to adjudicate this proceeding and all of the orders and the Temporary Injunction issued in this proceeding by the Honorable T. Whitfield Davidson, as District Judge for the United States District Court for the Northern District of Texas, have no basis whatsoever in law.

(a) Because the Complaint and Amended Complaint affirmatively show that the relief sought by the Plaintiff, Coke R. Stevenson, is relief that can be obtained only as a result of an election contest under the laws of the State of Texas of the Primary Election held by the Democratic Party of the State of Texas on August 28, 1948, and is not relief that any Court of the United States has jurisdiction to grant;

(b) Because it affirmatively appears from the Complaint and Amended Complaint herein that the Plaintiff, Coke R.

Stevenson, seeks to have the United States District Court for the Northern District of Texas adjudicate the validity of lawful and fully executed certifications from the legally authorized officers of the Democratic Party of the State of Texas and the Courts of the United States have no jurisdiction to adjudicate this subject matter;

(c) Because the right of Petitioner Lyndon B. Johnson to certification and inclusion as the nominee and candidate of the Democratic Party for the State of Texas for United States Senator upon the ballot to be voted on at the General Election to be held on November 2, 1948, has irrevocably and uncontestably vested under the laws of the State of Texas and is not subject to the process of, or to adjudication by, the Courts of the United States.

(d) Because it affirmatively appears from the Complaint and the Amended Complaint that the suit involves the title and right to the Democratic nomination as candidate for the United States Senate from the State of Texas and Section 1344 of Title 28 of the United States Code deprives the District Courts of the United States of jurisdiction of such a suit;

(e) Because it appears affirmatively from the Complaint and Amended Complaint that the cause of action asserted in this suit does not arise under the laws of the United States and does not involve property or civil rights protected by the laws of the United States but relates only to political rights as to which a United States District Court has no jurisdiction, either under Section 43 of Title 8 of the United States Code or any other statute of the United States, to grant equitable relief;

(f) Because the suit seeks to have a District Court of the United States adjudicate subject matter which under the provisions of Section I of Article 5 of the Constitution of the United States lies within the sole and exclusive jurisdiction of the Senate of the United States.

The Effect of the Temporary Injunction.

19. Notwithstanding the want of authority or color of jurisdiction on the part of the Honorable T. Whitfield Davidson, Judge of the District Court for the Northern District of Texas, to enter the temporary injunction hereinbefore described, the said Paul H. Brown as Secretary of State for the State of Texas has announced that he will observe the Temporary Injunction and will not, so long as the said Injunction is allowed to stand, certify to the election officers of the several counties of Texas, the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from Texas at the general election to be held on November 2, 1948.

20. The unlawful, invalid, improvident and void Temporary Injunction issued by the said T. Whitfield Davidson, Judge of the United States District Court for the Northern District of Texas, has prevented, and threatens for an indefinite period to continue to prevent, the said Honorable Paul H. Brown, Secretary of State of the State of Texas, from certifying to the election officials of the several counties of Texas the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from Texas.

21. Article 206 of the Penal Code of Texas provides that after the County Clerk of each county in Texas receives the names of candidates that have been certified to him by the Secretary of State, the County Clerk shall post at a conspicuous place in his office for the inspection and information of the public, the names of all candidates that have been so certified for at least ten (10) days before he orders the names of the candidates be printed on the ballot and further provides that in case the County Clerk refuses or neglects to comply with this requirement, he shall be fined not less than $200. nor more than $500. In *Sterling* v. *Ferguson*, 122 Texas 122, 53 S. W. (2d) 753, 760, the

Supreme Court of Texas said of this provision of the statute:

> "Since the county clerks cannot post the names of candidates lawfully certified to them as provided in the Penal Code, art. 206, until the names of state candidates have been certified to them by the secretary of state, it follows that the certificate of the secretary of state containing the names of state candidates must reach the county clerks in time for those officers to substantially perform their statutory duty and post the list of certified names before they order the ballots printed."

22. The laws of Texas also require that the official ballots that are to be used by all electors in a general election be available for distribution to absentee voters at least twenty (20) days before the date of the General Election.

23. Because of the provisions of the laws of Texas described in paragraphs 21 and 22, *supra*, the name of a candidate cannot be printed on the official ballots unless the certification of the name of the candidate has been received by the election officials in the several counties of Texas at least thirty (30) days prior to the date of the general election. Furthermore, as a practical matter, several days time must necessarily elapse between the date on which the Secretary of State of the State of Texas makes the actual certification of the name of the candidate and the receipt of the said certification by the election officials in all of the several counties of Texas. This interval of time is required because of the necessity of dispatching the certifications to the several county seats of Texas, many of which are located at great distances from the office of the Secretary of State.

24. It appears by the affidavit of the Honorable Paul H. Brown, Secretary of State of the State of Texas, which is marked Exhibit F and attached hereto and made a part hereof, that it is his considered opinion that as a practical

matter he must place the certifications of the names of the candidates that are to appear on the official ballots in the mails directed to the 254 County Judges in Texas, commencing on September 27, 1948, if the said certifications are to reach the various county judges in sufficient time for the county judges to comply with the applicable provisions of the laws of Texas. It further appears from the said affidavit that the said Honorable Paul H. Brown, Secretary of State of the State of Texas, will on or about September 27, 1948, mail out certificates and blanks to the various county judges of Texas without including thereon the name of Lyndon B. Johnson or the name of any other person as a candidate for United States Senator. It also appears from the said affidavit that if the Honorable Paul H. Brown is relieved from the compulsion of the said Temporary Injunction he will certify to the various county judges the name of Lyndon B. Johnson as the Democratic nominee for the United States Senate, but that each day of delay in making such certification of the name of Lyndon B. Johnson will jeopardize in an increasing number of counties the printing of ballots bearing the name of a Democratic nominee for the United States Senate.

25. The affidavits of John S. Simmang, County Judge of Lee County, Texas; John J. Burttschell, Sheriff of Lee County, Texas; Frank Shelley, Sheriff of Blanco County, Texas; C. H. Stevenson, County Clerk of Blanco County, Texas; V. E. Striegler, County Judge of Blanco County, Texas; Ford Albritton, County Clerk of Wichita County, Texas; Arthur Tipps, County Judge of Wichita County, Texas; Hammett Vance, Sheriff of Wichita County, Texas; and Miss Emilie Limberg, County Clerk of Travis County, Texas, which are collectively marked Exhibit G and attached hereto and made a part hereof, show that if the certification of a candidate is not received by the affiants from the Secretary of State of the State of Texas by October 2nd, 1948, it will be impossible for the affiants in the counties in which they serve as election officials to comply

with the law relative to the posting of the name of that candidate and the printing of ballots bearing the name of the candidate.

26. Your Petitioners state on information and belief that the facts set forth in the affidavits described in paragraph 25, *supra*, exist in the other 250 counties of the State of Texas and if the county election officials in the said other 250 counties in the said State of Texas do not receive certifications of the names of a candidate by October 2nd, 1948, it will be impossible for the said election officials to comply with the provisions of the law of Texas relative to the posting of the names of the candidate and the printing of ballots bearing the name of the candidate.

The Necessity to Protect and Preserve Appellate Jurisdiction.

27. If a stay of the unlawful and void Temporary Injunction issued as aforesaid is not granted before September 30, 1948, the said Temporary Injunction will have the effect of a final adjudication of the merits of this case. As alleged in paragraph 16, *supra*, the earliest date on which Petitioners' application for a stay can be heard by the Court of Appeals is October 4, 1948. Even if the Circuit Court of Appeals thereafter decides that the Temporary Injunction was unlawful and void, it will not be able to enter any judgment or to send down any mandate that can give effect to its decision and place the name of Lyndon B. Johnson on the official ballot as the candidate of the Democratic Party of the State of Texas for United States Senator.

28 If the said temporary injunction continues in effect until September 30, 1948, the power of the Supreme Court to review by a writ of certiorari any decree made by the Circuit Court of Appeals on Petitioners' application for a stay of the temporary injunction will be rendered wholly nugatory because no judgment or decree entered by the

Supreme Court will serve to nullify the effect of the said temporary injunction or to place the name of Lyndon B. Johnson on the official ballot as the candidate of the Democratic Party of the State of Texas for United States Senator.

29. If the said temporary injunction continues in effect until September 30, 1948, the power of the Circuit Court of Appeals and of the Supreme Court to exercise effectively their appellate power to review the merits of the case will be rendered nugatory. In such circumstances, a decision by the Circuit Court of Appeals or by the Supreme Court (on the issuance of a writ of certiorari) that the said Lyndon B. Johnson is entitled as a matter of law and right to have his name appear on the official ballot as a candidate of the Democratic Party of the State of Texas for United States Senator will be without force or effect because it will not be possible for the name of the said Lyndon B. Johnson to be placed on the said ballot.

30. For the reasons that have been set forth in paragraphs 22 to 26, inclusive, *supra,* the said temporary injunction if it continues until September 30, 1948, will make this case moot and will cause any exercise of appellate jurisdiction by either the Circuit Court or the Supreme Court to be empty and frivolous. A stay of the said temporary injunction is necessary to preserve and to protect the appellate jurisdiction of the Circuit Court of Appeals and of the Supreme Court.

Considerations of Equity and Convenience Require the Granting of the Stay.

31. An order staying and vacating the temporary restraining order will not amount to a final adjudication of the merits of the plaintiff's claim and will in no way prejudice plaintiff's rights if on final determination it is held that the Federal Courts have jurisdiction to determine whether Petitioner Lyndon B. Johnson's name should

appear on the official ballot as Democratic candidate for Senator from Texas.

32. In the event the operation of the temporary injunction is stayed and ballots are printed in time for use at the said general election to be held on November 2nd, 1948, containing the name of Lyndon B. Johnson as candidate of the Democratic Party for United States Senator, the rights of plaintiff will not be jeopardized. If the District Court has jurisdiction to determine and does determine that Lyndon B. Johnson's name is improperly or illegally on the ballot, it can after that determination restrain the issuance of a certificate of election to Lyndon B. Johnson; if the jurisdiction claimed actually exists the said District Court can restrain the counting of votes for said Lyndon B. Johnson; it can by appropriate publication of its declaration, give notice to the public before the said general election that Lyndon B. Johnson is not a legal candidate; and finally, the District Court may restrain (if its jurisdiction is what plaintiff claims it to be) Lyndon B. Johnson from taking a seat in the United States Senate. Petitioners submit that a mere recital of the exercise of such power shows that no such jurisdiction exists in any court of the United States, but in the improbable event that there is such jurisdiction, the rights of the plaintiff can be fully protected up to and after the said general election on November 2nd, 1948.

33. The temporary injunction disturbed the status quo as it existed at the time this proceeding was instituted in the District Court by depriving Lyndon B. Johnson of his right, which had vested irrevocably under the laws of Texas, (*Sterling* v. *Ferguson*, 122 Tex. 122, 53 S. W. (2d) 133) to have his name appear on the official ballot as the Democratic candidate for Senator, by interfering with the election machinery of the State of Texas, and by compelling the officials of the State of Texas to violate the ministerial duties imposed upon them by the statutes of Texas

and the said temporary injunction threatens to deprive the Democratic Party of any candidate for United States Senator on the ballots of the said general election to be held on November 2nd, 1948. An order vacating or staying said temporary injunction will restore the status quo without impairing or prejudicing the rights of plaintiff which may be protected by other adequate remedies that are available to him.

34. Unless a stay of the temporary injunction is granted, the name of no Democratic nominee for the office of United States Senator will appear on the ballot for the general election to be held on November 2nd, 1948, and the people of the State of Texas will be deprived of the opportunity of choosing a representative to the United States Senate in a lawful and orderly manner.

35. Because of the lack of time and the imminence of the national election and all of the other facts hereinbefore alleged, the only remedy that will prevent the violation of Petitioners' rights and of the right of the people of Texas to vote on official ballots prepared and distributed according to law, is an order staying and vacating the said Temporary Injunction pending the lawful and proper exercise of appellate jurisdiction by the Circuit Court of Appeals for the Fifth Circuit and the Supreme Court. Unless such a stay is granted the Petitioners will suffer immediate and irreparable injury. The jeopardy to the rights of Petitioners and the public importance of the issues in this case justify and require the immediate issuance of such a stay.

Wherefore, Petitioners pray that an order be issued staying the Temporary Injunction issued by the Honorable T. Whitfield Davidson, as Judge of the United States District Court for the Northern District of Texas, and staying

all further proceedings in that court in this case until further order of the Supreme Court.

Respectfully submitted,

ALVIN J. WIRTZ,
Austin, Texas.

JAMES V. ALLRED,
Houston, Texas.

THURMAN ARNOLD,
Washington, D. C.

ABE FORTAS,
Washington, D. C.

HUGH COX,
Washington, D. C.

Counsel for Petitioners.

RAYMOND BUCK,
Fort Worth, Texas

DALLAS SCARBROUGH,
Abilene, Texas

DUDLEY D. TARLETON,
Corpus Christi, Texas

LUTHER E. JONES, JR.,
Corpus Christi, Texas

JOHN H. CROCKER, SR.,
Houston, Texas

JOHN COFFER,
Austin, Texas

EVERETT L. LOONEY,
Austin, Texas

A. W. MOURSUND,
Johnson City, Texas

Of Counsel.

EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil No. 1640.

COKE R. STEVENSON, *Plaintiff*,

v.

TOM L. TYSON, VANN M. KENNEDY and LYNDON B. JOHNSON, *Defendants.*

ORIGINAL COMPLAINT.

TO THE HONORABLE JUDGE OF SAID COURT:

Coke R. Stevenson, who resides in Kimble County, Texas, Plaintiff, complaining of Tom L. Tyson, who resides in Navarro County, Texas, Vann M. Kennedy, who resides in Nueces County, Texas, and of Lyndon B. Johnson, who resides in Blanco County, Texas, all referred to as defendants herein.

I.

That Tom L. Tyson was elected Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, and Vann M. Kennedy was elected Secretary thereof.

II.

The rights and property involved in this action are nomination by the Democratic Party of Texas for the office of United States Senator from Texas for a term of six years

beginning in January, 1949, and which nomination amounts to election to the office of United States Senator from Texas for said term. The emoluments of said office exceed in amount, and therefore the value of the rights in controversy exceed in amount, the sum of Three Thousand Dollars ($3,000.00).

III.

The rights asserted in this action, and which this action is brought to enforce and protect, and the right to invoke the jurisdiction of this Court to prevent the wrongs and threatened wrongs alleged, arise under Section 4 of Article I and the Seventeenth Amendment to the Constitution of the United States, and under Section 43, Chapter 3, Title 8, United States Code, 1946, and under Sections 51 and 52, Chapter 3, Title 18, United States Code, 1948, and under Sections 241 and 242, Title 18, United States Code, the Act of Congress of June 25, 1948; and jurisdiction of this Court of this action is provided by Section 1343, Title 28, United States Code, the Act of Congress of June 25, 1948.

IV.

Heretofore, to-wit, on August 28, 1948, there was held in the State of Texas by the Democratic Party a general primary as provided in Article 3137, Revised Civil Statutes of Texas, 1925, for the purpose of making nomination of a candidate for the office of United States Senator from Texas for a term of six years beginning in January, 1949; that in said general primary election which was held on said date in each of the counties of Texas, with the exception of Hansford County and Kinney County, plaintiff Coke R. Stevenson was a candidate for nomination by the Democratic party for United States Senator from Texas for said term; and Lyndon B. Johnson, one of the defendants, was also a candidate for said nomination. Members of the Democratic party residing in Jim Wells County and in Zapata County voted in said primary, and the names of

Coke R. Stevenson and Lyndon B. Johnson appeared on the official primary ballot in said counties as candidates for said nomination.

V.

In Zapata County, Texas, there were on August 28, 1948, four regularly designated and established voting precincts. In precinct No. 1 of Zapata County, Texas, Coke R. Stevenson received 50 votes and Lyndon B. Johnson received 301 votes; in precinct No. 2 of Zapata County, Texas, Coke R. Stevenson received 17 votes and Lyndon B. Johnson received 192 votes; in precinct No. 3 of Zapata County, Texas, Coke R. Stevenson received 59 votes and Lyndon B. Johnson received 91 votes; and in precinct No. 4 of Zapata County, Texas, Coke R. Stevenson received 5 votes and Lyndon B. Johnson received 39 votes. Pursuant to the provisions of Article 3127, Revised Civil Statutes of Texas, 1925, the Chairman of the County Democratic Executive Committee of Zapata County, Texas, certified to the Chairman of the State Democratic Executive Committee the vote in said county as between the two candidates for the nomination of the Democratic party for United States Senator from Texas and fraudulently certified that Lyndon B. Johnson had received 669 votes, when in truth and in fact he had received only 623 votes; and said Chairman further fraudulently certified that Coke R. Stevenson had received only 71 votes in said county in said primary election, when in truth and in fact he had received 131 votes.

VI.

The Democratic primary election officials of Jim Wells County, Texas, after the polls had closed and all of the votes cast in precinct No. 13 of Jim Wells County, Texas, had been counted, first reported that Coke R. Stevenson had received in said precinct No. 13, 60 votes and that Lyndon B. Johnson had received 765 votes. Thereafter, and

approximately five days after the polls had closed and the counting of all votes cast in said precinct No. 13 had been completed and the vote reported, the Democratic primary election officials of Jim Wells County, Texas, fraudulently changed the vote as between Coke R. Stevenson and Lyndon B. Johnson to show that Lyndon B. Johnson had received 967 votes and Coke R. Stevenson had received 61 votes in said election precinct No. 13. At the time the polls were closed and the count of the votes in said election precinct No. 13 had been completed, only 841 votes had been cast in said precinct. In the few days following there were added to the list of persons voting in said precinct 200 additional names and 200 votes which had never been cast were fraudulently credited to Lyndon B. Johnson.

VII.

The former Chairman of the County Democratic Executive Committee of Jim Wells County, Texas, in certifying to the Chairman of the State Democratic Executive Committee the vote in Jim Wells County, Texas, for the Democratic nomination for United States Senator from Texas, fraudulently included in the returns so certified 201 or 202 more votes for Lyndon B. Johnson than he had in truth and in fact received and such additional votes credited to him in said certification were added as above alleged to the vote in precinct No. 13 of Jim Wells County, Texas.

VIII.

Under the provisions of Article 3137, Revised Civil Statutes of Texas, 1925, the State Democratic Executive Committee met on Monday, September 13, 1948, at Fort Worth, Texas, for the purpose of canvassing the returns from the various counties in Texas of the results of said primary election, and of the contest between plaintiff and defendant Lyndon B. Johnson for nomination by the Democratic party for United States Senator from Texas; and said Lyndon B. Johnson was given the benefit of said fraudulent returns

from Zapata and Jim Wells Counties, Texas, and after said canvass was made the State Democratic Executive Committee reported the results to the State Convention of the Democratic party held in Fort Worth on September 14, 1948; and said defendants Chairman and Secretary will issue a certificate of nomination of Lyndon B. Johnson, unless the relief herein prayed for is granted. The number of votes fraudulently credited to Lyndon B. Johnson in the returns from Zapata and Jim Wells Counties, Texas, were sufficient in number to change and did change the results of said primary election in the nomination of a candidate for United States Senator; and if said fraudulent votes so certified from said two counties are deducted from the total vote of the said Lyndon B. Johnson, the plaintiff Coke R. Stevenson would be shown entitled to and he would receive the certificate to nomination.

IX.

Under the laws of Texas, as declared by the Supreme Court of Texas (*Ferguson* v. *Huggins*, 122 Tex. 95, 52 S. W. (2d) 904), the State Democratic Executive Committee's power does not include the power to recount the ballots or go behind the returns filed with it which appear regular upon their face. Under the law of Texas, as declared by the Supreme Court of Texas (*Sterling* v. *Ferguson*, 122 Tex. 122, 53 S. W. (2d) 753), the certificate of nomination issued by the State Democratic Convention will give to Lyndon B. Johnson a standing and a right which will entitle him to have his name printed upon the official general election ballot, unless the certificate is set aside by a proper proceeding such as an election contest. The statutes of Texas make provision for an election contest but the provision so made is ineffective to contest a statewide primary election such as that held on August 28, 1948, because of the limited time between the date provided by statute for the issuance of the certification by the Secretary of State of the State of Texas to the officials of the various counties of the

names to be printed on the official ballot for the ensuing general election; and the effect of the decisions of the Supreme Court of Texas on this question is such as to deprive a candidate in a statewide primary election of any means of effectively contesting such a statewide primary on grounds of fraud or otherwise.

X.

The right asserted by plaintiff to an honest count and an honest certification of the results of said primary election in Zapata and Jim Wells Counties of Texas, and the right to have the returns honestly reported to the State Democratic Executive Committee and its canvass of the returns based upon honest certification from the several counties of the state, are rights secured to plaintiff by the Constitution of the United States and the Acts of Congress cited in the jurisdictional allegations above. Unless this Court by preemptory order restrains the Chairman and Secretary of the State Democratic Convention pending a final hearing in this action, said officers of the State Democratic Convention will make said certification of nomination of Lyndon B. Johnson.

XI.

Plaintiff has diligently investigated and caused to be investigated the matters alleged in this complaint, beginning immediately upon his first learning of possible fraud in said primary election in Zapata and Jim Wells Counties, Texas; that he learned the facts of fraud as herein alleged on September 10, 1948, and upon returning to Austin, Texas, on the morning of September 11, 1948, he arranged to have this petition prepared and filed, but he could not know that the State Democratic Executive Committee would certify the count in favor of Lyndon B. Johnson until it voted to do so late on the night of September 13, 1948. In this connection plaintiff shows that he has been delayed in determining the facts as herein alleged because his demands and the demands of his agents to inspect the records were con-

sistently refused until on September 10, 1948, he was permitted to see the voting list in precinct No. 13 of Jim Wells County, Texas, but was not allowed even then to make a copy thereof.

XII.

The laws of Texas do not afford plaintiff a remedy to enforce his rights and there is no adequate remedy afforded to him by law. Plaintiff's rights can only be protected by restraining orders and injunction as prayed for in this complaint.

WHEREFORE, plaintiff prays that the Court make a peremptory order restraining the defendants Chairman and Secretary of the State Democratic Convention from issuing said certificate of nomination of Lyndon B. Johnson; that the Court make said order returnable and set this action for hearing at the earliest possible date; and that upon trial on the merits of this action, that plaintiff have judgment permanently enjoining the issuance of a certificate of nomination of Lyndon B. Johnson, and, if one has been issued, then cancelling and annulling any certifications so made; for judgment declaring plaintiff received said nomination for United States Senator; for all of which plaintiff demands judgment; and plaintiff prays for such other and further relief as under the facts and in law and in equity he may be justly entitled to receive.

T. R. JAMES,
W. E. ALLEN,
C. C. RENFRO,
DAN MOODY,
Attorneys for Plaintiff.

THE STATE OF TEXAS }
COUNTY OF TARRANT }

Before me, the undersigned authority, on this day personally appeared Coke R. Stevenson, who, being by me first duly sworn, upon his oath deposes and says that he is the plaintiff named in the foregoing complaint; that he had read said complaint and is familiar with the contents thereof and that the allegations of fact set forth in said complaint are true.

/s/ COKE R. STEVENSON.

Subscribed and sworn to before me this 14th day of September, 1940.

/s/ HAZEL CREIGHTON,
Notary Public in and for
Tarrant County, Texas

(Seal)

Sept. 15, 1948 at 6:25 a.m.

This petition being considered, it is ordered that Tom L. Tyson and Vann M. Kennedy be restrained as prayed for pending a hearing hereon on Sept. 21, 1948 at 10 a. m. at Fort Worth, Texas, at which date this temporary order is made returnable.

/s/ T. WHITFIELD DAVIDSON,
U. S. Dist. Judge.

Filed 15 day of September
1948 at 1:00 o'clock p.m.
Geo. W. Parker, Clerk
By Ruth Buckley, Deputy

EXHIBIT B.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil No. 1640.

COKE R. STEVENSON, *Plaintiff*,

v.

TOM L. TYSON, VANN M. KENNEDY, LYNDON B. JOHNSON, PAUL H. BROWN, CLARENCE O. KRAFT, MELVIN FAULK, and SULLY MONTGOMERY, *Defendants*.

AMENDED ORIGINAL COMPLAINT.

To the Honorable Judge of said Court:

Now comes Coke R. Stevenson, who resides in Kimble County, Texas, plaintiff, complaining of Tom L. Tyson, who resides in Navarro County, Texas, Vann M. Kennedy, who resides in Nueces County, Texas, Lyndon B. Johnson, who resides in Blanco County, Texas, Paul H. Brown, who resides in Travis County, Texas, Clarence O. Kraft, Melvin Faulk and Sully Montgomery, all of whom reside in Tarrant County, Texas, and all of whom are hereafter referred to as defendants.

I.

The defendant Tom L. Tyson was elected Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, which is hereinafter referred

to, and Vann M. Kennedy, defendant, was elected Secretary thereof; these defendants are sued individually and in their official capacities as officers of said Democratic State Convention.

The defendant Lyndon B. Johnson was a candidate in the Democratic Primary Election held on August 28, 1948, hereinafter referred to.

The defendant Paul H. Brown is Secretary of State of the State of Texas, and he is sued individually and as such officer.

The defendant Clarence O. Kraft is County Judge of Tarrant County, Texas, and, by virtue of such official position, is a member of the election board for Tarrant County, Texas; the defendant Melvin Faulk is County Clerk of Tarrant County, Texas, and, by virtue of such official position, is a member of the election board for Tarrant County, Texas; the defendant Sully Montgomery is Sheriff of Tarrant County, Texas, and, by virtue of such official position, is a member of the election board for Tarrant County, Texas. These last three are sued individually and in their official capacities in and for Tarrant County, Texas, and as the election board for Tarrant County, Texas.

There are 254 counties in Texas and in each of said counties there is a County Judge, a County Clerk and a Sheriff and in each of said counties said Judge, Clerk and Sheriff constitute the official election board for their respective county.

Said parties constituting the election boards of said counties are so numerous as to make it impractical to bring them all before the Court and, there being a common question of law and fact affecting the several rights and a common relief being sought herein, the said Clarence O. Kraft, Melvin Faulk and Sully Montgomery are sued as representatives of the County Judges, County Clerks and County Sheriffs of Texas and in their capacity as a board as representative of the other 253 election boards of the counties of Texas and the officials constituting such boards.

II.

The occasion for this amendment and the reason for bringing in the above named new parties arise out of the following facts:

Notwithstanding the original restraining order issued by this Honorable Court September 15, 1948, at 6:25 a. m., on or about 11:00 a. m. on said date of September 15, 1948, the defendants Tom L. Tyson and Vann M. Kennedy and Lyndon B. Johnson caused to be presented to the defendant Paul H. Brown, as Secretary of State, in the City of Austin, Texas, a purported certificate of nomination of Lyndon B. Johnson as the Democratic Party's candidate for the office of United States Senator from Texas to the Congress of the United States, and the said Paul H. Brown is threatening to and will, unless restrained by this Honorable Court, certify to or report unto the County Judges, County Clerks, County Sheriffs and the 254 election boards in the counties of Texas, as set out above, that the said Lyndon B. Johnson is the candidate of the Democratic Party of Texas for the office of United States Senator from the State of Texas to the Congress of the United States, and said election officials, that is, the County Judges, the County Clerks and the County Sheriffs and the election boards constituted by said county officials over Texas, will prepare official ballots for the election to be held November 2, 1948, in which the voters of the State of Texas will elect a Senator from the State of Texas to the Congress of the United States notwithstanding that plaintiff is the legal and only candidate selected by the legal voters in the Democratic primary held August 28, 1948 by the Democratic Party of Texas for the purpose of determining whether the plaintiff or the defendant Lyndon B. Johnson would be selected by the members of the Democratic Party of Texas as the candidate of the Democratic Party of Texas for the office of United States Senator from Texas as aforesaid.

The defendant Paul H. Brown has threatened to make said certification or report to the county election officials

aforesaid immediately and will do so unless restrained by this Honorable Court. If said certification or report is made, said county officials will thereupon prepare official ballots to be used in the general election on November 2, 1948, with the name of the defendant Lyndon B. Johnson printed thereon as the candidate of the Democratic Party of Texas for the office of United States Senator as aforesaid, and will distribute said ballots to the various precincts in their respective counties and make same available to the voters in the general election to be held November 2, 1948, unless restrained by this Honorable Court.

That, if said certification or report is made by the defendant Paul H. Brown to said election boards and said ballots are printed with the name of Lyndon B. Johnson thereon, as set out above, irreparable injury and damage will result to plaintiff before notice can be served and a hearing had thereon.

III.

The Democratic Party of Texas is a political party as defined by statutory laws of Texas and for many years has exercised its right to designate candidates for offices to be elected by the voters of Texas and in all the years in which a United States Senator from the State of Texas to the Congress of the United States was to be elected it has always designated a candidate thereof, and the primary election held by the Democratic Party of Texas August 28, 1948, referred to in the original complaint and in this amended original complaint, was a part of the process of nominating a candidate for said office which the Democratic Party of Texas must follow in order to have its candidate's name placed on the official ballot to be used in the general election on November 2, 1948.

Plaintiff is now and has been for a number of years a member of the Democratic Party of Texas and was a candidate at the first or original primary election held July 24, 1948, by the Democratic Party of Texas and together

with the defendant Lyndon B. Johnson was elected to be a candidate in the run-off election held August 28, 1948, for final election by the members of the Democratic Party as the candidate of the Democratic Party for the office of United States Senator as aforesaid.

IV.

As a part of this amendment, plaintiff adopts and makes a part hereof as fully as if written herein all allegations contained in the original complaint filed in this cause of September 15, 1948, and the facts therein alleged still exist.

WHEREFORE, plaintiff prays that the Court enlarge the restraining order heretofore made on September 15, 1948, herein, restraining the defendants Tom L. Tyson and Vann M. Kennedy, as Chairman and Secretary of the State Democratic Convention from issuing said certificate of nomination of Lyndon B. Johnson; and that the defendant Paul H. Brown be restrained from certifying or reporting to the County Judges, County Clerks, County Sheriffs and County election boards of the State of Texas the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from the State of Texas; that the defendants Clarence O. Kraft, Melvin Faulk and Sully Montgomery in all of their official capacities, and all other County Judges, County Clerks, County Sheriffs and County election boards of the respective counties of Texas be restrained from preparing and distributing any official ballots for use in the general election to be held November 2, 1948, which contain the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from the State of Texas; that the court make said order returnable and set this action for hearing September 21, 1948, at 10:00 a. m. as originally ordered; and, that upon trial on the merits of this action that plaintiff have judgment permanently enjoining the issuance of a certificate of nomina-

tion of Lyndon B. Johnson, and, if one has been issued, then cancelling and annulling any such certification so made; and that the defendant Paul H. Brown and all other defendants herein named as election officials be permanently enjoined from preparing any official ballot for use in the general election November 2, 1948, carrying the name of the defendant Lyndon B. Johnson as the nominee of the Democratic Party of Texas for the office of United States Senator from the State of Texas; for judgment declaring plaintiff received the nomination of the Democratic Party of Texas for United States Senator; for all of which plaintiff demands judgment; and plaintiff prays for such other and further relief as under the facts and in law and in equity he may be justly entitled to receive.

T. R. JAMES,
DAN MOODY,
ALLEN B. CONNER,
JOSH H. GROCE,
(H. O. RENFROE),
Attorneys for Plaintiff.

Filed 17 day of September 1948 at 9:55 o'clock a. m.

THE STATE OF TEXAS
County of Tarrant

BEFORE ME, the undersigned authority, on this day personally appeared Coke R. Stevenson, who, being by me first duly sworn, upon his oath deposes and says that he is the plaintiff named in the foregoing Amended Complaint; that he had read said Amended Complaint, and is familiar with the contents thereof and that the allegations of fact set forth in said Amended Complaint are true.

/s/ COKE R. STEVENSON.

Subscribed and sworn to before me this 16th day of September, 1948.

.....
Notary Public, Tarrant County, Texas.

EXHIBIT B1.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil No. 1640.

COKE R. STEVENSON, *Plaintiff*,

v.

TOM L. TYSON, ET AL., *Defendants*.

ENLARGED RESTRAINING ORDER.

The Amended Original Complaint of Plaintiff having been presented and considered wherein the Plaintiff has brought in additional parties and is seeking an enlargement of the Original Restraining Order issued herein, and

IT APPEARING TO THE COURT that the relief should be granted, and

IT FURTHER APPEARING TO THE COURT that irreparable injury and damage will result to Plaintiff before notice can be served and a hearing had thereon because the Defendant Paul H. Brown is threatening to certify and report the nomination of the Defendant Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from the State of Texas to the Congress of the United States, and that upon receipt of such certification, and report of nomination the Defendants County Judges, County Clerks, County Sheriffs and County Election Boards in the 254 counties of Texas will prepare

and distribute official ballots to be used in the November 2, 1948, general election carrying the name of Defendant Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator unless a restraining order is issued immediately;

It Is Therefore Ordered that the Original Restraining Order be continued in full force and effect until the date set for its hearing, namely, September 21, 1948, at 10:00 A. M., and thereafter until said hearing is concluded, and that such restraining order be enlarged and the same is hereby enlarged to restrain the Defendant, Paul H. Brown from certifying or reporting to the Defendants Clarence O. Kraft, Melvin Faulk and Sully Montgomery, individually and as County Judge, County Clerk, County Sheriff of Tarrant County, and in their capacity as members of the Election Board for Tarrant County, Texas, and the other County Judges, County Clerks and County Sheriffs and County Election Boards in each of the Counties of Texas, that Lyndon B. Johnson is the candidate of the Democratic Party of Texas for the office of United States Senator for the State of Texas to the Congress of the United States; and the Defendants Clarence O. Kraft, Melvin Faulk, Sully Montgomery in their respective official capacity and as members of the Election Boards for Tarrant County, and all other County Judges, County Clerks, and County Sheriffs in their respective official capacity and as members of their respective County Election Boards are hereby restrained from preparing and distributing official ballots for use in the general election to be held November 2, 1948, carrying the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the office of United States Senator from the State of Texas to the Congress of the United States; the original restraining order as herein enlarged, and this restraining order shall remain in effect until September 21, 1948, at 10:00 A. M., at which time they are made returnable and shall then remain in force until the conclusion of the hearing thereon, which hearing shall

be held in the United States District Courtroom in the City of Fort Worth, Texas.

IT IS FURTHER ORDERED AND ADJUDGED that this Order shall become effective and operative upon the filing by the Plaintiff of the Statutory Undertaking in the sum of $1,000, to be approved by the Clerk of the Court.

SIGNED this 16th day of September, 1948, 8:35 P. M.

/s/ T. WHITFIELD DAVIDSON
United States District Judge

EXHIBIT C

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil No. 1640

COKE R. STEVENSON, *Plaintiff*,

v.

TOM L. TYSON, VANN M. KENNEDY, LYNDON B. JOHNSON, PAUL H. BROWN, CLARENCE O. KRAFT, MELVIN FAULK, AND SULLY MONTGOMERY, *Defendants*.

DEFENDANT LYNDON B. JOHNSON'S MOTION TO DISMISS FOR WANT OF JURISDICTION.

To the Honorable Judge of Said Court:

Defendant, Lyndon B. Johnson, although no notice has been given to him to appear in connection with the show cause orders issued by this Honorable Court on September 15th and 16th, since he is the real party at interest and the other Defendants have no personal interest in the outcome of this hearing, appearing for the sole purpose of filing this motion only, moves the Court to dismiss action for the following reasons:

(1) Because the Complaint, as amended, wholly fails to state sufficient facts to show that this Court has jurisdiction of the person of this Defendant or the cause of action which is the subject matter of this suit;

(2) Because the Complaint, as amended, shows on its face that this Court is wholly without jurisdiction of the person of this Defendant or the cause of action which is the subject matter of this suit;

(3) Because the Complaint fails to state a cause of action upon which relief can be granted;

(4) Because, as shown on the face of the Complaint and the Amended Complaint herein, this Court does not have venue of this motion since the only cause of action attempted to be asserted herein is against Defendant Paul H. Brown, Secretary of State, and this Defendant, neither of whom is a resident of this district or division;

(5) Because the Complaint, as amended, on its face affirmatively shows that the ultimate relief sought by Plaintiff herein is a judgment against this Defendant, which judgment can be obtained only as a result of a contest of the Primary Election held by the Democratic Party of Texas in its Second Primary conducted on the 28th day of August, 1948; all the allegations in the Complaint and the Prayer for relief are in essence and character an election contest, and present no other cause of action; and this Court has no jurisdiction to try, hear or determine an election contest;

(6) Because the Complaint and Amended Complaint on their face show that this is a suit between Plaintiff and this Defendant involving the title and right to the Democratic nomination as a candidate for United States Senator of and from the State of Texas, over which this Court has no jurisdiction;

(7) Because it appears from the allegations of the Complaint and Amended Complaint that the relief sought in this suit is not based upon a civil action authorized by law, but is in the nature of an election contest and suit for an office and an attack upon the verity of legal and duly exe-

cuted certification from the legally authorized agencies and officers of the State of Texas, which this Court has no jurisdiction to entertain;

(8) Because the Complaint, in substance and effect, presents a civil action for supposed rights to and possession of the office of United States Senator, the same being an action involving an election dispute of which no jurisdiction is given to this Honorable Court by any law, but of which the United States District Courts are *denied* jurisdiction by the plain terms of Title 28, United States Code, Section 1344;

(9) Because the Prayer of the Complaint asking that the certificate of Lyndon B. Johnson as nominee of the Democratic Party for United States Senator be cancelled and that Complainant be declared the nominee instead is, in effect, an application for a Writ of Mandamus against the Secretary of State and the various County officers, constituting the County Election Boards, to compel them to print Complainant's name on the ballot, and this Court has no power to grant Writs of Mandamus or any other relief in election cases;

(10) Because the Complaint fails to allege against any Defendant therein any fact or facts tending to show any purposeful or intentional discrimination between persons or classes of persons; therefore, said Complaint wholly fails to state any cause of action of which this Court has jurisdiction;

(11) Because the Complaint fails to allege against any Defendant therein any fact or facts tending to show any conspiracy or other unlawful acting together to discriminate as between persons or classes of persons; therefore said Complaint wholly fails to state any cause of action of which this Court has jurisdiction;

(12) Because the Complaint shows upon its face that the persons who Complainant alleges have wronged him by

the alleged fraudulent certifications in Zapata County, Texas and Jim Wells County, Texas: namely, the Chairmen of the County Democratic Executive Committees for said Counties, are not parties Defendant to this suit; and any relief to which Complainant might be entitled in an appropriate action would be against such parties and not against Defendants herein;

(13) Because the Complainant alleges no injury to himself under the Federal Constitution or any Federal law, but purports to allege injury under the election laws and procedures of the State of Texas, and the jurisdiction of this Court is strictly limited to that provided by Federal law;

(14) Because any rights that might be asserted in this Court with respect to the matters embraced by this Complaint can be asserted only by the Government of the United States in criminal proceedings or by a person who has been deprived of rights, privileges or immunities secured by the Constitution and laws thereunder, and the Complaint makes no allegations of any such rights, privileges or immunities of which Complainant has been deprived;

(15) Because the Complaint does not allege that Complainant is or was a voter or resident in Zapata or Jim Wells County, but seeks to invoke the jurisdiction of this Court to vindicate an alleged right of Complainant to a place on the ballot as the Democratic nominee for United States Senator, which place on the ballot arises and can be secured only under and pursuant to the laws of the State of Texas over which this Court has no jurisdiction;

(16) Because even if this Court had jurisdiction to enjoin a certification duly made under the laws of Texas of a candidate pursuant to the Primary Election held under such laws, it could not do so unless and until Complainant had pursued and exhausted his remedies under the laws of Texas;

(17) Because even if the Complainant had been deprived of any rights, privileges or immunities within the meaning of Title 8, Section 43, United States Code, such deprivation consisted in the alleged wrongful certification of ballots in Zapata and Jim Wells Counties which are set forth in the Complaint, and which certifications are final and complete under the laws of the State of Texas, thereby making the controversy which Complainant seeks to present to this Court entirely moot;

(18) Because this action is moot for the reason that as hereinafter alleged (paragraph 22) the final action has been duly and lawfully taken by the duly constituted agencies and officials of the State of Texas and the Democratic Party of the State of Texas and all that remains to be done is the ministerial act of certification by the Secretary of State which he is obliged by the laws of the State of Texas to perform, thereby making this controversy moot;

(19) Because, if everything alleged by Complainant were true (which this Defendant does not admit but will deny under oath in the proper forum), the Complainant's remedy is exclusively under the laws and in the courts of the State of Texas;

(20) Because the claim which Plaintiff presents to this Court is a claim which does not involve property or civil rights, but political rights, and over which a Federal Court of equity has no jurisdiction under Title 8, Section 43, United States Code, but which arises under and involves solely the laws of the State of Texas;

(21) Because, in so far as any relief sought herein against Defendant Paul H. Brown, Secretary of State, and the Defendants constituting the official election boards of Tarrant County and the other counties of Texas is concerned, the cause of action constitutes a suit against the State of Texas;

(22) Because this Court may not exercise its equitable jurisdiction in this situation for the reasons that (a) the rights of this Defendant in and to certification and inclusion upon the ballot as the nominee of the Democratic Party have incontestably vested under the laws of the State of Texas, and are not subject to the processes of this Court; and (b) this Court cannot grant to Complainant the remedy which he seeks: Namely, to usurp the position of this Defendant as said nominee, because the selection of said nominee is and can be made only under and pursuant to the election laws of the State of Texas; all of which more particularly appears from the following:

This Defendant, being a citizen of the State of Texas and in every way qualified and in no way disqualified to hold the office of United States Senator of and from the State of Texas, was a candidate for the nominee of the Democratic Party of Texas for said office at the Second Primary of the Democratic Party of Texas conducted and held on August 28, 1948, and the State Executive Committee of the Democratic Party of Texas, pursuant to and acting within the duties and powers conferred upon it by law, duly, regularly, and legally canvassed the returns of said election as said returns were certified to it by the Chairmen of the Executive Committees of the several counties of Texas in which such election was held; and at such canvass Plaintiff herein appeared before said Committee and challenged and questioned the returns as certified by the County Chairman of Jim Wells County, making the same allegations of fraud as contained in the Complaint herein filed, but accepted as correct and made no challenge respecting the returns from Zapata County or any other County in Texas; that after a full hearing and as a result of its canvass of the returns certified to it in accordance with law, the said State Executive Committee determined that this Defendant had received a majority of the votes cast for United States Senator in said Primary Election and so certified the result thereof to the Chairman of the State Demo-

cratic Convention. Based on the returns so certified by the State Executive Committee, the State Democratic Convention, duly held, organized and convened in the City of Fort Worth, Texas, and the officers and members thereof, did, on the 14th day of September, 1948, duly and regularly declare this Defendant to be the nominee of the Democratic Party and to be its candidate for the office of United States Senator of and from the State of Texas at the next ensuing General Election to be held in the State of Texas on the first Tuesday in November, 1948. Pursuant to the declaration so made, and in obedience to the requirements of law, the Chairman of said Convention, Honorable Tom L. Tyson, and the Secretary thereof, Honorable Vann M. Kennedy, Defendants herein, did, on said 14th day of September, 1948, and prior to the filing of this suit, prior to the presentation of the Complaint herein to your Honor, and prior to the entry of any Order herein, duly and legally certify to the Secretary of State of the State of Texas, Honorable Paul H. Brown, one of the Defendants herein, the name of this Defendant as the candidate of the Democratic Party of and from the State of Texas at such General Election, all in accordance with the provisions of valid statutes of the State of Texas. A true and correct copy of such certification is attached hereto and made a part hereof for all purposes. Said certificate was duly received by the Defendant Paul H. Brown, in his official capacity as Secretary of State of the State of Texas, on September 15, 1948, and is now on file at the office of said Defendant. By virtue of the facts aforesaid, this Defendant is entitled to have the Defendant Paul H. Brown, in his capacity as Secretary of State of the State of Texas, certify to each of the County Clerks of the several counties of the State of Texas the name of this Defendant as nominee of the Democratic Party of Texas and as its candidate for the office of United States Senator of and from said State of Texas in the General Election to be held in said State on November 2, 1948, and to have the name of this Defendant, as such

nominee and candidate, to be duly and seasonably printed upon the official ballots to be used in said General Election in the several counties of the State of Texas. The Defendant Paul H. Brown, as Secretary of State, in his official capacity is required by law to perform the ministerial duty of certifying the name of this Defendant as the nominee and candidate of the Democratic Party of Texas for the office of United States Senator of and from the State of Texas to the several County Clerks of the State of Texas, and the Defendants Clarence O. Kraft, Melvin Faulk and Sully Montgomery, as the official election board of Tarrant County, and the official election boards of the other counties of Texas are required by law to perform the ministerial duty of placing the name of this Defendant, as the nominee and candidate of the Democratic Party of Texas for the office of United States Senator of and from the State of Texas on the official ballot to be voted in the General Election to be held in Texas on the first Tuesday in November, 1948. By virtue of such facts, this Defendant has a vested legal right to have the Secretary of State certify his name as such nominee and candidate to the County Clerks of the several counties of Texas, and to have the election boards of said counties perform all ministerial duties imposed on them and requisite to having the name of this Defendant appear as such nominee and candidate for said office on the official ballot to be used and voted at said General Election in the several counties of Texas. As alleged by Plaintiff under oath in the original Complaint, "under the law of Texas as declared by the Supreme Court of Texas (*Sterling* v. *Ferguson*, 122 Tex. 122, 53 S. W. (2) 133), the certificate of nomination issued by the State Democratic Convention" would "give to Lyndon B. Johnson a standing and a right which" entitles "him to have his name printed upon the official General Election ballot, unless the certificate is set aside by a proper proceeding such as an election contest."

WHEREFORE, this Defendant prays this Honorable Court to immediately grant his above and foregoing Motion to Dismiss, this Defendant hereby expressly reserving all rights and privileges of answering on the merits of any cause of action or justiciable issue of which this Court may hold it has jurisdiction.

LYNDON B. JOHNSON, *Defendant.*

The State of Texas, County of Tarrant:

BEFORE ME, the undersigned authority, on this day personally appeared LYNDON B. JOHNSON, known to me to be the person whose name is subscribed to the foregoing pleading, who being by me duly sworn, states upon oath: I have read the foregoing motion and the facts therein stated are true.

(s) LYNDON B. JOHNSON.

SWORN to and subscribed before me, this....day of September, A.D., 1948.

.....
Notary Public in and for Tarrant County, Texas.

EXHIBIT D.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil No. 1640.

COKE R. STEVENSON, *Plaintiff*,

v.

TOM L. TYSON, VANN M. KENNEDY, LYNDON B. JOHNSON, PAUL H. BROWN, CLARENCE O. KRAFT, MELVIN FAULK, and SULLY MONTGOMERY, *Defendants*.

ORDER GRANTING TEMPORARY INJUNCTION.

On the 21st day of September, 1948, came on before the Court the hearing on the application for temporary injunction filed herein by Plaintiff, Coke R. Stevenson, against Defendants, Tom L. Tyson, Vann M. Kennedy, Lyndon B. Johnson, Paul H. Brown, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery; the hearing on such application for temporary injunction having been fixed by an order of this court, entered on September 15, 1948, and enlarged on September 16, 1948, wherein temporary restraining orders were issued pending the hearings fixed for this day.

And came the Plaintiff in person and by his attorneys of record; and came the Defendants, Tom L. Tyson, Vann M. Kennedy, and Paul H. Brown, by their attorneys of record; and also came the defendant, Lyndon B. Johnson, in person and by his attorneys of record.

The Defendants, Clarence O. Kraft, County Judge of Tarrant County, Texas, Melvin Faulk, County Clerk of

Tarrant Couty, Texas and Sully Montgomery, Sheriff of Tarrant Couty, Texas, composing the Election Board of Tarrant Couty, Texas, came not. Came also the intervenors, V. E Striegler, County Judge of Blanco County, Texas, Fran Shelley, Sheriff of Blanco County, Texas, and C. H. Stcenson, County Clerk of Blanco County Texas, composing th election board of Blanco County, Texas, as representativ of the other 253 Election Boards of the counties of Txas and the officials constituting such boards, by their attcneys, they having been permitted to intervene herein b order of this Court.

All of the foresaid parties, both Plaintiffs, Defendants, and Intervenors, having appeared in response to such show cause orders of September 15, 1948, and September 16, 1948, for the urpose of responding thereto.

And the Dfendant, Lyndon B. Johnson, and the Intervenors name above first appeared specially for the limited purpose of presenting the motions to dismiss filed by the Defendan, Lyndon B. Johnson, and the above named Intervenors, wherein such parties denied that this Court had jurisdicton over this case for the reasons set out in each such moion to dismiss.

And the Court, having first heard and considered the motions to dismiss aforesaid, has heretofore overruled such motions, to which each of the parties urging the same excepted and here and now again except. And thereupon, on the 22nd day of September, 1948, the Defendant, Lyndon B. Johnson, and the Intervenors above named requested leave to withdraw the written opposition to the granting of the temporary injunction theretofore filed herein on September 21, 1948, and further in connection therewith requested the Court to render judgment on the Plaintiff's application for temporary injunction based on his sworn petition. The Court thereupon called upon the Plaintiff to state his position with respect to such request on the part of the Defendant, Lyndon B. Johnson, and the Intervenors above named, and was advised by the Plaintiff that he, the Plain-

tiff, desired to offer evidence in support of his application for temporary injunction. The Court thereupon ruled that the requests made by Defendant Lyndon B. Johnson and the Intervenors above named would be denied and that he would proceed to hear evidence on such application for temporary injunction.

Thereupon the Court heard the evidence from the witnesses and received in evidence affidavits and other documentary evidence, at the conclusion of which the Court invited and heard arguments from Counsel for the Plaintiff, Counsel for the Defendant, Lyndon B. Johnson, and Counsel for the above named Intervenors. After hearing such arguments the Court thereupon, on the 22nd day of September, 1948, found the facts to be with the Plaintiff and announced his Judgment granting the temporary injunction restraining the Defendant, as hereinafter set out, for the reason that there was evidence of fraud in the official returns from certain election officials in Jim Wells, Zapata, and possibly other counties to the State Democratic Executive Committee, without which there would have been a change in the official certification by the Officers of the State Convention as to who was the Democratic nominee for the Office of United States Senator and that an injunction is necessary to preserve the subject matter of the litigation pending trial on the merits and to prevent the deprivation of rights guaranteed by the Constitution and Laws of the United States.

Thereupon in open Court on the 22nd day of September, 1948, the Defendant, Lyndon B. Johnson, and the above named Intervenors each requested the Court to stay the temporary injunction pending an appeal from such temporary injunction to the Circuit Court of Appeals of the United States for the Fifth Circuit sitting at New Orleans, to which Court said Defendant, Lyndon B. Johnson, and said intervenors are appealing.

The Court denied the requests aforesaid for a stay, to which the Defendant, Lyndon B. Johnson, and the above named Intervenors each excepted.

It is therefore, on the 22nd day of September, 1948, ordered and adjudged and decreed by the Court that the Defendants and Intervenors, and each of them, are temporarily enjoined and restrained from certifying or reporting to the Defendants, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery, individually and as County Judge, County Clerk, and County Sheriff of Tarrant County, Texas, and in their capacities as members of the Election Board of Tarrant County, Texas, and the other County Judges, County Clerks, and County Sheriffs, and County Election Boards in each of the counties of Texas, that Lyndon B. Johnson is the candidate of the Democratic Party of Texas for the Office of United States Senator of the State of Texas to the Congress of the United States; and further enjoining and restraining the Defendants, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery, in their respective official capacities and as members of the Election Board for Tarrant County, Texas, and all other County Judges, County Clerks, and County Sheriffs, including the Intervenors above named in their respective official capacities and as members of their respective County Election Boards from preparing and distributing official ballots for use in the General Election to be held November 2, 1948, carrying the name of Lyndon B. Johnson as the candidate of the Democratic Party of Texas for the Office of United States Senator from the State of Texas to the Congress of the United States.

It is further ordered and adjudged that this temporary injunction shall remain in full force and effect pending the determination of this action; provided that the Plaintiff first gives security in the sum of $1,000. for the payment of such costs and damages as may be incurred and suffered by any party who is found to have been wrongfully enjoined or restrained, such bond to be approved by the Court or by the Clerk of the Court.

And it is further ordered that the Defendants and Intervenors, or such of them as desire, are given leave to appeal this order.

Entered as of the 22nd day of September, 1948, and executed this the 23rd day of September, 1948.

/s/ T. Whitfield Davidson,
United States District Judge.

Approved as to Form:

/s/ Dan Moody,
Attorney for Plaintiff.

/s/ James V. Allred,
Attorney for Defendant, Lyndon B. Johnson.

/s/ Everett L. Looney,
Attorneys for Intervenors.

EXHIBIT E.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12,529

LYNDON B. JOHNSON, ET AL, *Appellants,*

VS.

COKE R. STEVENSON, *Appellee.*

On Appeal from the District Court of the United States for the Northern District of Texas.

On Motion for Stay of Temporary Injunction Granted by the District Judge.

Before JOSEPH C. HUTCHESON, JR., Circuit Judge:

Appellants having lodged their appeal with the court, by motion, addressed to it but presented to me individually in chambers in Houston, Texas, seek an order from the court "setting aside and staying the temporary injunction order issued by the court below pending the determination of this appeal".

On grounds strongly alleged and as strongly presented, they urge that the suit below was in substance and effect an election contest and as such was a matter over which the court had no jurisdiction. They allege and urge that in assuming jurisdiction thereof and entering the order complained of, the court acted unlawfully and without authority, and that unless the temporary injunction order is stayed

and set aside by the court pending determination of the appeal, the voters of Texas will be prevented from voting for the lawful candidate of the Democratic party for the office of United States Senator. They allege and urge that the granting of the stay will not nullify nor impair any rights of Stevenson, and finally that unless the stay is issued by the court, the court will be deprived of its appellate jurisdiction since the matter will have become moot by the time that it can pass upon the appeal.

The counsel for the appellee, Stevenson, having been notified that the application would be presented, were present, full arguments from both sides were heard, both upon the merits of the contention that the court below is without jurisdiction and on the question of relief which the hearing judge could, and ought to, grant.

In the course of the arguments, the power and function of a single circuit judge to grant relief of the kind sought as distinguished from the power of the court itself was fully presented and discussed.

Thereupon, the counsel for both sides having expressed their desire for as early a hearing as possible by the court, it was determined that the appeal, together with any other matters connected with this proceeding or the case from which it comes, which either party desired to present, would be set before the court at its October term in Atlanta on Monday, October 4th, and the clerk was directed to set the case accordingly. This having been done, and the arguments having been concluded, and the matter having been further investigated, I have reached the firm conclusion that whatever the merits of the controversy may be or may be determined to be, and whatever the court may determine it could, or should, do in respect to the motion for stay or any other relief which may be asked of it, it is quite clear that I, as a single circuit judge, have no power, and ought not, to set aside or stay the injunction appealed from, and that if I should consider the motion as addressed to me individually, I would have no power, and ought not, as a single judge, to grant it.

Petitioners' reliance upon Rule 62(g) of the Rules of Civil Procedure, as conferring power on me to act, will not do. That subdivision of the rule does not purport to, it does not, confer power. It merely provided that the other provisions of rule 62 do not limit any power which may presently exist under the law. A careful examination of the law reveals no statute authorizing one appellate judge to set aside or stay the injunction of a district judge, especially since, as rule 62(c) makes plain, the power to determine whether an injunction should be suspended, etc. is conferred on the district judge.

The Court of Appeals does have power under 28 U.S.C.A. Sec. 377, to issue any writ, including a stay "strictly in aid of the appellate jurisdiction", *In Re: Phila.* v. *Redding,* 103 F(2) 901. In *Scripps-Howard Radio* v. *Com.,* 316 U.S. 4, it is held that a court of appeals has power to stay an order of the commission under the general power of the court to protect from irreparable wrong.

I have no doubt then, of the power of the court to grant a stay in connection with the appeal if it appears to the court that this will preserve the status quo or the effectiveness of the judgment subsequently to be rendered, and I am also of the opinion that the court can, by writ of prohibition issued under the restrictive rules governing such writs, grant relief from the exercise of jurisdiction by a district court which is clearly beyond its power. I find no statute and no precedent which will support the action of a circuit judge in undertaking to suspend an injunction pending the appeal. Title 28 U.S.C.A., Sec. 227 contains a provision which might be thought applicable. This section providing for appeals of interlocutory orders provides: "and the proceedings in other respects in the district court shall not be stayed during the pendency of such appeal unless otherwise ordered by the court, or the appellate court, or a judge thereof". This plainly has to do with not the temporary injunction appealed from but "the proceedings in other respects".

In one poorly considered case, *Sommer* v. *Rotary Lift Co.,* 58 F(2) 765, the Circuit Court for the Ninth Circuit

did hold that a single circuit judge could grant a supersedeas in an appeal from an interlocutory injunction in a patent case. It said, however, "Ordinarily application for supersedeas after denial thereof by trial judge should not be granted by circuit judge", and the authorities that it cites in support of its holding that the power existed, 28 U.S.C.A., Sec. 227 and *Haverman Mfg. Co.*, 147 U. S., 525, do not support it.

I have noted on the motion "Denied by me without prejudice to the right to present the motion to the court", and have instructed the Clerk of the Court to file the motion with such notation.

JOSEPH C. HUTCHESON, JR.,
Circuit Judge.

Sept. 24, 1948.

EXHIBIT F.

STATE OF TEXAS }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, on this day personally appeared Paul H. Brown, known to me, who being first duly sworn upon oath says:

I am Secretary of State of the State of Texas.

Art. 2925 Revised Civil Statutes of Texas provides that "at least thirty days before each general election the Secretary of State shall prescribe forms of all blanks necessary under this title and furnish same to each County Judge."

This means that I should have in the hands of each of the 254 County Judges of the State of Texas a sample ballot to contain the names of the nominees for each party not later than October 2. As a practical matter, in view of the fact that the means of communication with many of the 254 counties is limited to railroad or bus line, I must send out these blanks several days in advance of October 2. As a further practical matter, before sending out such blanks I must have the proof prepared by the printer, proofread the same and the printing completed in advance of the time before the same are placed in the mails for transmission to the 254 County Judges of Texas.

As a further practical matter, due to previous experience of this office, it is my considered opinion that I must place these blanks in the mails directed to the 254 County Judges in Texas commencing September 27th, 1948, in order that they may reach the various County Judges in sufficient time for the County Judges to comply with Art. 2950 Revised Civil Statutes of Texas, and the County Clerks to comply with Penal Code, Art. 206.

I will on about September 27th, 1948 mail out certificates and blanks to the various County Judges of Texas without the name of Lyndon B. Johnson or anyone's name as the Democratic candidate for United States Senator. If I am later relieved from the compulsion of the Restraining

Order issued by Honorable T. Whitfield Davidson, Judge of the United States District Court of the Northern District of Texas, and later certify to the various County Judges the name of Lyndon B. Johnson as the Democratic nominee for United States Senator, it may be impossible for many of them, because of difficulties of communications, to post the notice with the name thereon for the ten (10) days prescribed by law. The matter of having the candidate's name printed on the official ballot to be used in the General Election as candidate for such office presents a practical problem. The ballots for use of absentee voting must be ready because absentee voting begins twenty (20) days prior to the date of the General Election.

Further Affiant saith not.

PAUL H. BROWN.

SWORN TO AND SUBSCRIBED before me by the said Paul H. Brown this 25th day of September, 1948.

H. W. DUNLOP,
Notary Public,
Travis County, Texas.

(SEAL.)

EXHIBIT G.*

STATE OF TEXAS }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, on this day personally appeared Miss Emilie Limberg, known to me, who being first duly sworn upon oath says:

I am County Clerk of Travis County, Texas.

It is my duty to post in a conspicuous place in my office at the Court House for the inspection of the public the names of all candidates that have been lawfully certified to me by the Secretary of State to be printed on the official ballot for at least ten days before I order the same to be printed on said ballot. My failure to do the foregoing subjects me to a fine of not less than $200.00 nor more than $500.00. Texas Penal Code, Art. 206.

I must be prepared to permit absentee voting to commence on October 13, 1948, for the general election to be held on November 2, 1948. R. C. S. Art. 2956.

Further affiant saith not.

EMILIE LIMBERG.

SWORN TO AND SUBSCRIBED before me by the said Emilie Limberg this 25th day of September, 1948.

H. W. DUNLOP,
Notary Public,
Travis County, Texas.

(SEAL)

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* Note: Only the affidavit of Limberg is printed herein since the affidavits of John S. Simmang, John J. Burttschell, Frank Shelley, C. H. Stevenson, O. E. Striegler, Ford Albritton, Arthur Tipp and Hammett Vance, are to the same effect.

ANNEX "B."

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION.

Civil Action No. 1640.

COKE R. STEVENSON, *Plaintiff*,

v.

TOM. L. TYSON, ET AL., *Defendants*.

ORDER APPOINTING SPECIAL MASTERS.

It appearing to the Court that the trial of this case will involve consideration of much evidence from sources outside the territorial limits of this judicial district and that testimony from many witnesses residing outside this district will be needed in the trial of this case and that this is the kind of a case where a preliminary report by experienced masters will be of substantial service;

IT IS THEREFORE ORDERED that W. R. Smith Jr. be and he is appointed hereby Special Master to make an investigation as to the facts with respect to the Democratic Party primary election held in Jim Wells County, Texas, August 28, 1948, in so far as it affected the nomination by the Democratic party of Texas of a candidate for the Office of United States Senator from Texas as between Coke R. Stevenson and defendant Lyndon B. Johnson. Said Special Master shall go to Jim Wells County and hold such hearings as may be necessary for a full investigation of the facts as to the conduct and results of said Primary Election in Jim Wells County, Texas, and hear witnesses, examine the certified poll lists, the lists of those who voted in said election, the tally lists and return sheets made in the conduct of said election, and particularly all the facts in respect to the holding of said election and the returns therefrom in Precinct Thirteen (13) of Jim Wells County, Texas.

At such hearings the parties may be represented by counsel and at their request said Special Master shall issue process to compel the attendance of witnesses and the production of evidence for use at such hearings or in the trial of this case. If requested, the Master shall make copies of any pertinent evidence and impound the originals for use in this Court upon the trial of this case.

Also It is Ordered That J. M. Burnett be and he is hereby appointed Special Master to make an investigation as to the facts with respect to the Democratic Party primary election held in Duval and Zapata Counties, Texas, August 28, 1948, in so far as it affected the nomination by the Democratic Party of Texas of a candidate for United States Senator from Texas as between Coke R. Stevenson and defendant Lyndon B. Johnson. Said Special Master shall go to Duval and Zapata Counties and hold such hearings as may be necessary for a full investigation of the facts as to the conduct and results of said primary election in Duval and Zapata Counties, Texas, and hear witnesses, examine the certified poll lists, the lists of those who voted in said election, the tally sheets and return sheets made in the conduct of said election, and particularly all the facts in respect to the holding of said election and the returns therefrom in Precincts One (1), Two (2), Three (3), and Four (4) of Zapata County, Texas, and in Duval County, Texas.

At such hearings the parties may be represented by counsel and at their request said Special Master shall issue process to compel the attendance of witnesses and the production of evidence for use at such hearings or in the trial of this case. If requested, the Master shall make copies of any pertinent evidence and impound the originals for use in this Court upon the trial of this case.

Each of said Special Masters may appoint a reporter to take and transcribe any oral testimony offered by either party.

Said Special Masters are appointed in accordance with Rule 53, Federal Rules of Civil Procedure, and the pro-

ceedings, shall be governed thereby, unless otherwise provided herein. Each Special Master shall set forth in his report his findings of fact and conclusions of law as to the issues submitted. Each report shall have the effect set forth in subdivision (3) of said Rule. Unless otherwise ordered, each report shall be filed herein on or before October 2nd, 1948.

/s/ T. WHITFIELD DAVIDSON,
United States District Judge.